

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

Crl.MC.No. 164 of 2006(A)

ST.1152/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTAYAM

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PETITIONER: ACCUSED

1. BABU, S/O.CHACKO, ARACKAL HOUSE,
VIJAYAPURAM VILLAGE, MANGANAM KARA,
MANDIRAM, KOTTAYAM DISTRICT.
2. BIBU IYPE, S/O.BABU,
ARACKAL HOUSE, VIJAYAPURAM VILLAGE,
MANGANAM KARA, MANDIRAM, KOTTAYAM DISTRICT.
3. BIJOY ISSAC @ BIJOY, S/O.BABU,
ARACKAL HOUSE, VIJAYAPURAM VILLAGE,
MANGANAM KARA, MANDIRAM, KOTTAYAM DISTRICT.

BY ADV. SRI.C.S.SUNIL

RESPONDENTS: DEFENDANTS

1. JOBY JOY @ JOY, S/O.JOY,
CHERUHOTAYIL HOUSE, VIJAYAPURAM VILLAGE,
MANGANAM KARA, MANDIRAM, KOTTAYAM DISTRICT.
2. BENCY @ KOCHUMON, S/O.DAVID,
ANCHERI HOUSE, VIJAYAPURAM VILLAGE,
MANGANAM KARA, MANDIRAM, KOTTAYAM DISTRICT.
3. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.GOPALAKRISHNA KURUP
SRI.S.MANU
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 03/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.164 of 2006

Dated this the 3rd day of April, 2007

ORDER

The petitioners are accused 1 to 3 in a private complaint lodged by the 1st respondent herein. Cognizance has been taken of the offences punishable under Sections 341 and 324 read with 34 I.P.C. The crux of the allegations in the complaint filed by the 1st respondent is that all the 3 accused persons, on account of animosity arising from an incident which took place earlier on a Christmas night, had assaulted respondents 1 and 2 herein. They were allegedly wrongfully restrained. Hurt was caused to them. Dangerous weapons were also allegedly used for the commission of the offence. That alleged incident took place on the night of 24.12.2003 at about 2 a.m.

2. The learned Magistrate, after observing the procedure prescribed by law, has chosen to take cognizance of the offences allegedly committed by the petitioners and issued processes to them under Section 204 Cr.P.C. The petitioners have come to this Court. They have obtained an order of stay against further proceedings.

3. The learned counsel for the petitioners submits that the complaint filed by the 1st respondent against the petitioners alleging commission of the offences under Sections 341 and 324 I.P.C is liable to be quashed invoking the extraordinary inherent powers under

Section 482 Cr.P.C. What are the reasons ? The learned counsel for the petitioners submits that in respect of an incident which took place within the residential compound of the petitioners at 11.30 p.m on 24.12.2003 a complaint was filed. Investigation was conducted by the investigators and Annexure-4 charge sheet has been filed against respondents 1 and 2 herein. The petitioners (accused 1 to 3) are the injured persons in Annexure-4 charge sheet filed by the police. Cognizance has been taken. That proceedings, it is now submitted, has ended in conviction also.

4. According to the petitioners, long after the incident and initiation of proceedings against respondents 1 and 2 in the police charged case, on 04.10.2004, with vexatious intent and solely as a counter blast to Annexure-4 charge sheet, Annexure-5 private complaint was filed by the 1st respondent. The learned Magistrate without due and proper application of mind has taken cognizance. This in short is the grievance raised.

5. It is by now trite that powers under Section 482 Cr.P.C are to be invoked in an exceptional case and only sparingly in aid of justice. It cannot certainly be invoked as a matter of course. It is also trite that attempt cannot be made invoking the jurisdiction under Section 482Cr.P.C to resolve disputed questions of fact. Allegations and counter allegations are raised. According to the petitioners, there was only one incident that had taken place and that was at 11.30 p.m

on 24.12.2004 within the residential compound of the petitioners. No incident as alleged by the respondents had taken place at 2 a.m on the night of 24.12.2003. As stated earlier, the disputed question as to whether the allegations raised by the petitioners in the police charge case or the allegations raised by the 1st respondent in the private complaint are correct cannot obviously be resolved in this proceedings under Section 482 Cr.P.C. The short question that falls for consideration is whether the proceedings have been initiated with vexatious intent and the proceedings results in miscarriage of justice and abuse of process of the court. Except that the complaint about an accident which took place on 24.12.2003 was filed on 4.10.04, no other circumstances are pointed out at all. The complaint filed shows that a doctor has been cited and an outpatient ticket has been produced to show that injury was suffered by the 1st respondent. The delay in filing the complaint is sought to be explained with the theory that a complaint had been made to the police. But the police succumbing to the influence of the petitioners had not taken any action on that complaint, it is alleged.

6. At the moment and with the available inputs, I find it very difficult to accept the request of the learned counsel for the petitioners to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C and bring to premature termination the

proceedings initiated against the petitioners. It is for the petitioners to appear before the learned Magistrate and raise all necessary and appropriate contentions to claim discharge under Sections 245(1) or 245(2) Cr.P.C and if that be not possible, to claim acquittal at later stages of the proceedings.

6. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-